

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
KELLEY HYDRAULICS, INC.,	§	CASE NO. 21-33269
	§	
DEBTOR.	§	

MOTION OF DEBTOR TO DISMISS CASE

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN TWENTY-ONE 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE MARVIN ISGUR, U.S. BANKRUPTCY JUDGE:

KELLEY HYDRAULICS, INC. debtor and debtor in possession (“KHI” or the “Debtor”) file this *Motion of Debtor to Dismiss Case* (the “Motion to Dismiss”) and in support thereof would show the Court the following.

INTRODUCTION

1. This motion seeks authorization for the Debtor to voluntarily dismiss this Chapter 11 case.

2. As of the filing of this Motion, the Subchapter V Trustee, NLCG Private Lending Group LLC (the first lien holder, often referred to as Next Level) (“NLCG”), and the local tax authorities represented by Perdue Brandon do not oppose dismissal.

3. The IRS has indicated that the IRS will express a view on dismissal once a motion to dismiss is filed.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action pursuant to, and without limitation §§ 105 and 1101 et seq. of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Code”).

5. Venue action is proper in this Court pursuant to 28 U.S.C. § 1409.

6. This is a core proceeding within the meaning of 11 U.S.C. § 157(b).

7. The Court may try this matter to a conclusion and enter final orders under *Stern v. Marshall*, 131 S. Ct. 2594 (U.S. 2011).

FACTUAL BACKGROUND

The identify and background of the Debtors and Debtors in Possession.

8. KHI is the owner of a 10 acre tract of real property near Waller, Texas (the “Subject Property”) that serves as the location of the hydraulics repair business of KHI and also serves as the residence of Joe Kelley.

The Commencement of the Bankruptcy Cases.

9. On October 5, 2021, KHI commenced the above-captioned Chapter 11 case (under Subchapter V) by filing a voluntary petition.

10. KHI commenced this case in order to stop the foreclosure of the subject real property by the first lien holder and following the exhaustion of attempts to delay foreclosure in order to potentially resolve the first lien indebtedness.

Factual background in support of the relief requested.

11. The Debtor has reached as resolution with NLCG that resolves the foundational dispute that led to the filing of this Chapter 11 case.

12. Dismissal of the case will better permit the Debtor to fulfill the resolution that has been reached with NLCG.

13. The Debtor proposes that this dismissal be with prejudice for 180-days to the refiling of any subsequent Chapter 11 case by the Debtor and/or by Joe Kelley, provided that such prohibition shall end as to Joe Kelley individually upon a resolution of the Next Level lien position.

RELIEF REQUESTED

14. Accordingly, pursuant to Code §§ 105 and/or 1112, the Debtor respectfully requests that this Chapter 11 case be dismissed with prejudice to the voluntary commencement of any subsequent bankruptcy case by the Debtor for a period of 180-days from the entry of the dismissal order, as set forth in the proposed agreed order.

15. A proposed form of agreed order accompanies this Motion to Dismiss and is incorporated by reference herein.

BASIS OF RELIEF

16. KHI believes that dismissal would be in its best interest and in the best interest of its creditors.

17. Dismissal will enable the Debtor to better address the disposition of the Subject Property and resolution of the first lien indebtedness of Next Level.

18. The proposed dismissal is not a so-called “structured dismissal” as evidenced by the proposed order.

19. In order to resolve potential creditor objections in advance, KHI further requests that such dismissal be with prejudice for 180 days from the entry of the dismissal order, as set forth in the proposed order.

20. As indicated above, Next Level consents to a dismissal of this case.

21. The proof of claim on file by the IRS in this case relates to estimated liabilities. The ability of the IRS to collect against the Debtor, Joe Kelley, and/or any other responsible persons will not be diminished by dismissal. Furthermore, the Debtor is a “sub-S” entity and any tax liabilities would flow through to Joe Kelley individually.

RESERVATION OF RIGHTS

22. KHI reserves the right to amend and/or supplement this Motion prior to any hearing.

23. KHI further reserves the right to withdraw this Motion to Dismiss and maintain this Chapter 11 case if circumstances warrant.

CONCLUSION AND PRAYER

WHEREFORE, the Kelley Hydraulics, Inc, the debtor and debtor-in-possession, respectfully requests that the Court enter an order granting the Motion to Dismiss this case as set forth in the accompanying proposed order. Debtor respectfully request that the Court grant to Debtor such other and further relief to which Debtor is entitled at law or in equity.

Dated: March 18, 2022

Respectfully submitted:

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: /s/ Jeff Carruth
JEFF CARRUTH (TX SBN: 24001846)
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Arlington, Texas 76105
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ATTORNEYS FOR KELLEY HYDRAULICS, INC.,
DEBTOR AND DEBTOR IN POSSESSION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on March 18, 2022 (1) by electronic notice to all ECF users who have appeared in this case to date (2) by regular mail to all parties appearing in the attached address list (i.e. mailing matrix) obtained from the Court's PACER facility, as set forth in the attached lists.

/s/ Jeff Carruth
JEFF CARRUTH

21-33269 Notice will be electronically mailed to:

Jeffery Dayne Carruth on behalf of Debtor Kelley Hydraulics, Inc.

jcarruth@wkpz.com, jcarruth@aol.com; atty_carruth@trustesolutions.com; carruthjr87698@notify.bestcase.com

Drew McManigle

drew@MaccoRestructuringGroup.com, kathy@macco.group; TX86@ecfbis.com

Ha Minh Nguyen on behalf of U.S. Trustee US Trustee

ha.nguyen@usdoj.gov

Owen Mark Sonik on behalf of Creditor WALLER COUNTY, et al

osonik@pbfc.com, osonik@ecf.inforuptcy.com; mvaldez@pbfc.com

US Trustee

USTPRegion07.HU.ECF@USDOJ.GOV

REGULAR MAIL LIST / MATRIX

Kelley Hydraulics, Inc. -- MODIFIED SERVICE LIST January 25, 2022					
Address1	Address1	Address3	Address4	Address5	METHOD OF SERVICE
Kelley Hydraulics, Inc	17933 FM 362			Waller, TX 77484-9397	Direct email
Next Level Capital Solutions, LLC	c/o Alexander Perez	Hughes Watters Askanase	1201 Louisiana, 28th Fl	Houston, TX 77002-5607	NOA-ECF
WALLER COUNTY, et al					undeliverable
Harris County, et al.	c/o John P. Dillman	Linebarger Goggan Blair & Sampson	P O Box 3064	Houston, TX 77253-3064	NOA-ECF
Internal Revenue Service	7200 N MoPac, Suite 120			Austin, TX 78731-3058	Regular mail
INTERNAL REVENUE SERVICE	CENTRALIZED INSOLVENCY OPERATIONS	PO BOX 7346		Philadelphia, PA 19101-7346	preferred
Internal Revenue Service	Special Procedures Staff - Insolvency	P. O. Box 7346		Philadelphia, PA 19101-7346	Regular mail
Joe Kelley	17933 FM 362			Waller, TX 77484-9397	Direct email
NLCG Private Lending Fund, LLC	2200 Market St, Suite 412			Galveston, TX 77550-1532	NOA-ECF
Peter J. Sepio Jr	Doyle Law Firm	6710 Stewart Rd #300		Galveston, TX 77551-2216	n/a - NLCG prepetition counsel
Securities & Exchange Commission	Attn: Angela Dodd	173 W. Jackson Blvd.	Suite 900	Chicago, IL 60604-2908	Regular mail
US Trustee	Office of the US Trustee	515 Rusk Ave	Ste 3516	Houston, TX 77002-2604	NOA-ECF
WALLER COUNTY	730 9TH STREET			HEMPSTEAD TX 77443-4534	NOA-ECF
Waller County School District	1918 Key St			Waller, TX 77484-8400	NOA-ECF
Drew McManigle	Chapter 11 Trustee	700 Milam, Suite 1300		Houston, TX 77002-2736	NOA-ECF
Jeffery Dayne Carruth	Weycer Kaplan Pulaski & Zuber, P.C.	24 Greenway Plaza, #2050		Houston, TX 77046-2443	n/a

PROPOSED FINAL ORDER

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	
KELLEY HYDRAULICS, INC.,	§	CASE NO. 21-33269
	§	
DEBTOR.	§	

**AGREED ORDER GRANTING MOTION OF DEBTOR TO DISMISS
CASE (RE: DOCKET NO. ____)**

On this day came on for consideration the *Motion of Debtor to Dismiss Case* (Docket No. ____) (the “Motion to Dismiss”) filed herein on March 18, 2022 by Kelley Hydraulics, Inc., debtor and debtor in possession (“KHI” or the “Debtor”). The Court finds and concludes that upon review of the record of this case that sufficient notice was provided in accordance with the Federal Rules of Bankruptcy Procedures and/or the Local Bankruptcy Rules (the “Rules”), no objections or requests for a hearing were filed or otherwise received within the time period specified under the Rules, and with respect to the Motion that cause exists to grant the relief requested therein.

IT IS THEREFORE ORDERED THAT:

1. The Motion to Dismiss is granted as set forth herein.
2. All capitalized terms shall have the same meaning as ascribed to such terms in the Motion, unless otherwise defined herein.
3. This case is hereby dismissed effective immediately upon entry of this Order.
4. This dismissal is with prejudice to the Debtor or Joseph Kelley individually filing any subsequent bankruptcy case for a period of 180 days from the entry of this Order; provided, however, that such prohibition shall terminate with respect to Joseph Kelley individually upon the earlier of (i) a release of the lien of NLCG

Private Lending Group LLC (“NLCG”) with respect to the Subject Property or (ii)
NLCG otherwise taking title to the Subject Property.

Dated: _____

THE HON. MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

{continued on following sheet}

AGREED:

/s/ Alexander Perez*

Alexander Perez TBN: 24074879

aperez@hwa.com

Wayne Kitchens TBN: 11541110

wkitchens@hwa.com

Hughes, Watters & Askanase, LLP

1201 Louisiana Street, 28th Floor

Houston, Texas 77002

Telephone: (713) 759-0818

Facsimile: (713) 759-6834

**ATTORNEYS FOR NLCG PRIVATE
LENDING FUND, LLC**

Joseph Kelley, INDIVIDUALLY

/s/ Joseph Kelley*

Joseph Kelley, individually

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: /s/ Jeff Carruth

JEFF CARRUTH (TX SBN: 24001846)

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Fax: (866) 666-5322

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**ATTORNEYS FOR
KELLEY HYDRAULICS, INC.,
DEBTOR AND DEBTOR IN POSSESSION**

** Signature by permission by /s/ Jeff Carruth*